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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of

Amendment of Section 73.202(b),

Table of Allotments,

FM Broadcast Stations.

(Crowell, Bonham, Bridgeport, Palestine, Ranger,

Stephenville, Wellington, Texas; Apache,

Ardmore, Bennington, Cache, Elk City, Lawton,

Oklahoma).¹

MM Docket No. 01-293

RM-10302

RM-10547

REPORT AND ORDER

Adopted: March 24, 2004

Released: March 26, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it: (1) a *Notice of Proposed Rule Making*² issued at the request of Jeraldine Anderson ("Petitioner"); (2) supporting comments filed by the Petitioner; (3) a counterproposal filed by North Texas Radio Group, L.P. ("North Texas") and A.M. & P.M. Communications, L.L.C. ("AM & PM");³ (4) a withdrawal of expression of interest filed by the Petitioner; and (5) reply comments filed by North Texas and AM & PM.

BACKGROUND/COMMENT SUMMARY

2. At the request of the Petitioner, the *NPRM* proposed the allotment of Channel 250C3 to Crowell, Texas, (pop. 2,600).⁴ In response to the *NPRM*, the Petitioner filed brief supporting comments, reiterating her continuing interest to file an application to construct an FM station on Channel 250C3 in Crowell.

3. North Texas, the licensee of Stations KBOC(FM), Bridgeport, TX, KFYZ(FM), Bonham, TX, and KYYK(FM), Palestine, TX, and AM & PM, licensee of Station KAOC(FM), Ardmore, Oklahoma, jointly filed a timely counterproposal.⁵ The counterproposal seeks the upgrade of Station KBOC(FM), Bridgeport, from Channel 252A to Channel 252C0 and reallocations and changes of communities of license for the Bonham, Palestine, and Ardmore stations. The counterproposal is mutually exclusive with the *NPRM*'s proposal because one of the required channel changes, the

¹ The communities of Bonham, Bridgeport, Palestine, Ranger, Stephenville, Wellington, Texas, and Apache, Ardmore, Bennington, Cache, Elk City, and Lawton, Oklahoma, have been added to the caption.

² *Crowell, TX*, 16 FCC Rcd 18078 (MMB 2001) ("*NPRM*").

³ The counterproposal was placed on *Public Notice* on August 16, 2002, Report No. 2570.

⁴ The *NPRM* proposed the allotment of Channel 260C3 to Crowell as a second local service because an earlier filed proposal was pending in MM Docket No. 01-210 to allot Channel 293C3 to Crowell. However, a request to withdraw the Channel 293C3 allotment proposal at Crowell was subsequently approved, thereby making the Petitioner's proposed allotment at Crowell a potential first local service.

⁵ North Texas and AM & PM are under common ownership.

downgrade and reallocation of Station KJMZ(FM) from Channel 251C1 at Lawton, Oklahoma, to Channel 250A at Cache, OK, is short-spaced to Channel 250C3 at Crowell.⁶

4. On the deadline for filing reply comments, the Petitioner submitted a request to withdraw her expression of interest in the allotment of Channel 250C3 at Crowell pursuant to Section 1.420(j) of the Commission's Rules, stating that she has entered into a settlement agreement with North Texas. Under the terms of the agreement, the Petitioner agrees to withdraw in return for the reimbursement of her legitimate and prudent expenses incurred in preparing and prosecuting her rulemaking petition. She states that she has decided not to pursue her interest in operating a station to serve Crowell. In reply comments, North Texas and AM & PM urge adoption of their counterproposal because it is unopposed.

5. After the pleading cycle ended, the Commission staff requested and the Petitioner submitted additional information regarding the settlement. Specifically, the Petitioner supplied an itemization of her legitimate and prudent expenses and documentation supporting the itemization.

DISCUSSION

6. As a threshold matter, we will approve the withdrawal of the Petitioner's expression of interest in Channel 250C3 at Crowell. The settlement agreement complies with Section 1.420(j) because the Petitioner is withdrawing her interest in return for reimbursement of her itemized and documented out of pocket expenses incurred in pursuing her proposal. Further, the Petitioner and a principal of North Texas and AM & PM have certified that this is the only consideration for the withdrawal. Since no other interest has been expressed in the allotment of Channel 250C3 at Crowell, we will not make an allotment at that community.

7. With the elimination of the Crowell proposal, we will grant North Texas and AM & PM's counterproposal consistent with the public interest because it will provide first local services to four communities with a combined population of 6,680 and will result in a net gain of service to over 1,600,000 people within 12,003 square kilometers. The counterproposal involves seven inter-related channel changes, which we will discuss below.

8. To begin with, we will upgrade North Texas' Station KBOC(FM), Bridgeport, Texas, from Channel 252A to Channel 252C0 at a new site.⁷ This upgrade will provide a gain of service to 1,875,234 persons in an area of 20,050 square kilometers, with no loss area. This upgrade in turn directly requires five related channel changes at other communities, which we will make. The first of these is the reallocation, downgrade, and change of community of license for Station KJMZ(FM) from Channel 251C1 at Lawton, Oklahoma, to Channel 250A at Cache, Oklahoma. This reallocation and change of community of license complies with Section 1.420(i) of the Commission's Rules because the two channels are mutually exclusive with each other and because it will result in a preferential arrangement of allotments under the FM allotment priorities.⁸ Specifically, the reallocation and downgrade will result in a first local service to Cache,⁹ triggering Priority 3. By way of comparison, retention of Channel 251C1 at

⁶ See 47 C.F.R. § 73.207. The required spacing between Channel 250C3 at Crowell, TX, and Channel 250A at Cache, OK, is 142 kilometers whereas the actual spacing between these proposals is 131.9 kilometers.

⁷ The reference coordinates for Channel 250C0 at Bridgeport, Texas, are 33-26-13 and 97-29-05.

⁸ The FM allotment priorities are (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3).] See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

⁹ Cache (pop. 2,371) is a community for allotment purposes because it is incorporated, listed in the U.S. Census, and has numerous indicia of community status such as a local government, police department, water department, businesses, schools, and churches. The reference coordinates for Channel 250A at Cache, OK, are 34-37-39 and 98-33-38.

Lawton would be a tenth local service, triggering Priority 4.

9. While a staff engineering analysis reveals that there will be a loss of service to 149,502 persons within an area of 13,861 square kilometers, the loss area is well served with five or more services. Further, the licensee of Station KJMZ(FM) has submitted a statement, consenting to the reallocation and downgrade and declaring that it will file an application for a new transmitter site for Cache. North Texas also states that it will reimburse the licensee of Station KJMZ(FM) for the reasonable costs of making the requested modifications to its facilities.

10. Second, the upgrade at Bridgeport necessitates the reallocation, change of community of license, and relocation of transmitter site for Station KCUB(FM) from Channel 252A at Stephenville, TX, to Channel 253A at Ranger, TX. This proposal complies with Section 1.420(i) because the channels are mutually exclusive and because it creates a preferential arrangement of allotments. The reallocation will create a first local service to Ranger (pop. 2,584), triggering Priority 3,¹⁰ while retention of the station at Stephenville would be a second local service under Priority 4. The reallocation and transmitter site relocation will create a loss of service to 27,740 persons within an area of 2,514 square kilometers. However, the loss area is well served with five or more aural services, and the loss is offset in part by a gain of service to 15,570 persons within an area of 2,514 square kilometers. The licensee of Station KCUB(FM) has provided a statement consenting to the changes and stating that it will apply to operate at a new transmitter site. Also, North Texas and AM & PM state that they will reimburse the licensee for the reasonable costs of making the requested modifications to its facilities.

11. The third required channel change is the downgrade of North Texas' Station KYYK(FM), Palestine, Texas, from Channel 252C2 to Channel 252C3.¹¹ North Texas proposes to change the transmitter site of Station KYYK(FM) in conjunction with the downgrade. According to a staff engineering analysis, there will be a loss of service to 123,959 persons within an area of 4,632 square kilometers, and a gain of service to 4,381 persons within 864 square kilometers. However, this loss of service is outweighed by the overall public interest benefits of the counterproposal, including first local services at four communities, and a net gain in service to over 1,600,000 persons.

12. Fourth, the Bridgeport upgrade requires the downgrade, reallocation, and change of community of license for North Texas' Station KFYZ(FM) from Channel 252C3 at Bonham, Texas, to Channel 251A at Bennington, Oklahoma. Bennington (pop. 289) is a community for allotment purposes because it is listed in the U.S. Census and possesses indicia of community status including a local government, police department, fire department, public schools, churches, and businesses. The downgrade and reallocation complies with Section 1.420(i) of the Commission's Rules because Channels 252C3 at Bonham and Channel 251A at Bennington are mutually exclusive and because the reallocation will result in a preferential arrangement of allotments.¹² Specifically, the reallocation will result in a first local service at Bennington, triggering Priority 3. By way of comparison, retention of Station KFYZ(FM) at Bonham would be a second local service under Priority 4 because of the presence of a local AM station.

13. While there will be a loss of service to 62,295 persons within an area of 4,049 square kilometers, the loss area is well served with more than five aural services, and there will be a gain of

¹⁰ Ranger is a community for allotment purposes because it is incorporated and listed in the U.S. Census. It also has other indicia of community status such as a local government, fire department, police department, street and parks department, school district, newspaper, and businesses. The reference coordinates for Channel 253A at Ranger are 32-22-55 and 98-45-55.

¹¹ The reference coordinates for Channel 252C3 at Palestine, Texas, are 31-46-17 and 95-37-54.

¹² The reference coordinates for Channel 251A at Bennington, Oklahoma, are 34-04-00 and 95-59-52.

service to 10,561 persons within an area of 2,494 square kilometers. A staff engineering analysis reveals that the gain area includes some underserved areas. Specifically, 174 people within 69.7 square kilometers will receive a third aural service; 1,875 people within an area of 396.9 kilometers will receive a fourth service; and 729 people within an area of 295.5 square kilometers will receive a fifth aural service.

14. The fifth required channel change is the reallocation, change of community of license, and transmitter site relocation for AM & PM's Station KACO(FM) from Channel 253C3 at Ardmore, Oklahoma, to Channel 253C3 at Apache, Oklahoma. Apache (pop. 1,616) is a community for allotment purposes because it is incorporated, listed in the U.S. Census, and has indicia of community status such as a local government, police and fire departments, a community center, a large number of businesses, a public library, churches, and schools. The reallocation and change of community of license complies with Section 1.420(i) because Channels 253C3 at Ardmore and Apache are mutually exclusive and the proposal results in a preferential arrangement of allotments. The reallocation to Apache will provide a first local service under Priority 3 while retention of the station at Ardmore would be a fifth local service, triggering lesser Priority 4. While there will be a loss of service to 56,848 persons within an area of 3,879 square kilometers, this loss is offset by a gain of service to 179,646 persons within 4,803 square kilometers. Moreover, the loss area is well served with more than five aural services.¹³

15. Finally, two other channel changes are required to reallocate Channel 253C3 at Apache, as well as to reallocate Channel 250A to Cache, Oklahoma. First, it is necessary to downgrade and change the transmitter site for Station KTLJ(FM), Elk City, Oklahoma, from Channel 253C to Channel 295C1.¹⁴ While there will be loss of service to 25,414 persons within an area of 5,532 square kilometers and a gain of service to 8,220 persons, the net loss in service to 7,294 persons is offset by the overall public interest benefits of the counterproposal, including first local services at four communities and an overall net gain in service to more than 1,600,000 persons. The licensee of Station KTLJ(FM) has provided a statement, consenting to the downgrade and site change and stating that it will apply for the modified allotment. Also, North Texas and AM & PM state that they will reimburse the licensee for the reasonable costs of making the requested modifications to its facilities.

16. Second, the downgrade on Channel 253C3 at Elk City requires the substitution of Channel 253C3 for vacant Channel 298C3 at Wellington, Texas.¹⁵ Channel 298C3 can be allotted to Wellington at its current reference coordinates.¹⁶

ORDERING CLAUSES

17. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b), and 0.283(b) of the Commission's Rules, IT IS ORDERED, That effective May 10, 2004, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below as follows:

¹³ The reference coordinates for Channel 253C3 at Apache, Oklahoma, are 34-53-34 and 98-14-01.

¹⁴ The reference coordinates for Channel 295C1 at Elk City, Oklahoma, are 35-15-36 and 99-33-08.

¹⁵ This channel was included in the inventory for vacant non-reserved band FM allotments in Broadcast Auction No. 37 that has been postponed. See *Public Notice*, DA 01-2148, released September 14, 2001, 66 FR 48467 (September 20, 2001).

¹⁶ The reference coordinates for Channel 253C3 at Wellington, Texas, are 34-49-13 and 100-14-29.

<u>Communities</u>	<u>Channel Number</u>
Ardmore, Oklahoma	239C1
Bennington, Oklahoma	251A
Cache, Oklahoma	250A
Elk City, Oklahoma	232C3, 243C1, 295C1
Lawton, Oklahoma	231C, 237C3, 258C3, 267C1, 297C2
Apache, Oklahoma	253C3
Bonham, Texas	---
Bridgeport, Texas	252C0
Palestine, Texas	252C3
Ranger, Texas	253A
Stephenville, Texas	---
Wellington, Texas	248A, 253C3

18. IT IS FURTHER ORDERED, That pursuant to Section 316 of the Communications Act of 1934, as amended, the licenses for the stations listed below ARE MODIFIED to specify operation on channels and/or communities listed below, subject to the following conditions:

<u>Station</u>	<u>Community</u>	<u>Channel</u>
KFYZ(FM)	Bennington, OK	251A
KJMZ(FM)	Cache, OK	250A
KTLJ(FM)	Elk City, OK	295C1
KACO(FM)	Apache, OK	253C3
KBOC(FM)	Bridgeport, TX	252C0
KYYK(FM)	Palestine, TX	252C3
KCUB(FM)	Ranger, TX	253A

- (a) Within 90 days of the effective date of this *Order*, the licensees shall submit to the Commission minor change applications for construction permits (Form 301).
- (b) Upon grant of the construction permits, program tests may be conducted in accordance with Section 73.1620 of the Commission's rules.
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

19. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rulemaking fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, the licensees of Stations KBOC(FM), Bridgeport, TX, KFYZ(FM), Bennington, OK, KACO(FM), Ardmore, OK, KCUB(FM), Ranger, TX, and KJMZ(FM), Cache, OK, are required to submit rulemaking fees in addition to the fees required for the applications to effect the change in community of license and upgrade.

20. IT IS FURTHER ORDERED, That the request for withdrawal of expression of interest filed by Jeraldine Anderson IS GRANTED and the rulemaking petition (RM-10302) filed by Jeraldine Anderson IS DISMISSED.

21. IT IS FURTHER ORDERED, That the counterproposal (RM-10547) filed jointly by

North Texas Radio Group and A.M. & P.M. Communications IS GRANTED.

22. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

23. For further information concerning this proceeding, contact Andrew J. Rhodes, Audio Division, Media Bureau (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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